

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HAKEEM EL BEY,

Defendant.

No. 14-CR-00447

Chicago, Illinois

February 13, 2018

11:00 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - HEARING  
BEFORE THE HONORABLE JUDGE EDMOND E. CHANG

APPEARANCES:

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10:57:18 1 THE COURTROOM DEPUTY: 14 CR 447, USA versus Bey.

10:57:32 2 MS. MALIZIA: Good morning, Your Honor. Kathryn

10:57:35 3 Malizia and Christopher Hotaling for the United States.

10:57:35 4 MR. HOTALING: Good morning, Your Honor.

10:57:38 5 MR. FUENTES: Good morning, Your Honor. Gabe Fuentes

10:57:42 6 as standby counsel.

10:57:43 7 THE COURT: And Mr. Bey, good morning to you.

10:57:48 8 DEFENDANT BEY: Good morning to you, Judge.

10:57:50 9 THE COURT: I think the first thing we need to take

10:57:53 10 care of is that Mr. Bey filed a -- what I would construe as a

10:57:59 11 motion to have what he called a private meeting with the

10:58:06 12 Court, which I am interpreting as ex parte, meaning just with

10:58:12 13 me.

10:58:16 14 Okay. So that did hit the docket.

10:58:19 15 Here is what I propose to do:

10:58:23 16 Mr. Bey, the general rule is, and it is usually quite

10:58:26 17 firm, is that there must not be any ex parte communications

10:58:33 18 from the parties, meaning that -- it is just a fancy Latin

10:58:38 19 term for really both sides should be present whenever the

10:58:43 20 Judge is hearing anything about the case.

10:58:49 21 DEFENDANT BEY: Okay.

10:58:50 22 THE COURT: And that is what you are asking for,

10:58:52 23 right? Just to talk to me without the government there?

10:58:55 24 DEFENDANT BEY: I didn't mind if the government came.

10:58:58 25 THE COURT: You just wanted it kind of under seal in

10:59:01 1 other words, like the public didn't know?

10:59:03 2 DEFENDANT BEY: I wanted it in private, and your  
10:59:06 3 chambers is private, and I wanted to see what we could do  
10:59:09 4 about this case, with me requesting the right to subrogation.

10:59:18 5 THE COURT: Okay.

10:59:20 6 To the extent that -- because there was another  
10:59:22 7 filing that was -- I think docketing called it an affidavit  
10:59:31 8 for lack of a better term, which that was docket entry 146,  
10:59:36 9 and, yeah, what was asserted in there, I am afraid there is no  
10:59:45 10 legal effect and no relief that I can give you based on what  
10:59:50 11 is in those papers.

10:59:51 12 So if what you are asking is to see if the case can  
10:59:55 13 be resolved in some way short of trial, all right, that is  
10:59:58 14 something that you have to talk to Mr. Fuentes about, and also  
11:00:02 15 with the government, but I can't by rule participate in any  
11:00:08 16 kind of negotiations to try to resolve the case short of  
11:00:12 17 trial.

11:00:13 18 Do you understand that?

11:00:14 19 DEFENDANT BEY: Yeah, I do.

11:00:16 20 And no, no. What I am saying is I do have a right  
11:00:19 21 to -- for the prosecutors, since the prosecutor brought the  
11:00:24 22 case, to certify the subrogation on the case, and I have that  
11:00:29 23 right. So I am -- I'm -- I'm -- I don't want to proceed  
11:00:37 24 without that right.

11:00:39 25 So I would like my subrogation and --

11:00:42 1 THE COURT: And I am afraid there is no right of  
11:00:45 2 subrogation that applies in a criminal case, that usually has  
11:00:50 3 to do with -- if someone has a claim, that claim can be  
11:00:54 4 subrogated to another party or entity, and then they can  
11:00:58 5 pursue that claim. So that is not anything that applies to a  
11:01:01 6 criminal case.

11:01:02 7 DEFENDANT BEY: Can I ask you a question, Judge?

11:01:13 8 THE COURT: So I'll just finish out real quickly.  
11:01:13 9 There is no relief I can give you. To the extent you think  
11:01:17 10 you have this right, you have now made a record of it, so this  
11:01:23 11 is being transcribed --

11:01:24 12 DEFENDANT BEY: Is this on the record?

11:01:26 13 THE COURT: Yes, everything in court that we do is on  
11:01:28 14 the record, and the transcript can always be prepared.

11:01:32 15 DEFENDANT BEY: Because I just heard what you said.  
11:01:35 16 They made a claim. No one have a higher claim than me,  
11:01:37 17 because they are using my name as equity. They brought the  
11:01:41 18 case in my name. So no one here has a higher claim than me.  
11:01:43 19 If they do, I would like to see it. I would like them to come  
11:01:46 20 and let me know that they do. No one here has a higher claim  
11:01:50 21 than me.

11:01:51 22 And so I do have that right.

11:01:53 23 THE COURT: And I respectfully disagree.

11:01:55 24 DEFENDANT BEY: And I can -- I won't consent to  
11:01:59 25 progress with the case without that right to subrogation, for

11:02:05 1 them to certify it.

11:02:06 2 THE COURT: So once again, and we do need to move on  
11:02:10 3 to other topics, but once again, the right to subrogation does  
11:02:14 4 not apply in criminal cases. And so there isn't any relief  
11:02:20 5 that I can give you based on what you are arguing now. And  
11:02:24 6 the government is entitled to continue to proceed with the  
11:02:27 7 prosecution.

11:02:29 8 So we do need to move on to other topics at this  
11:02:32 9 point.

11:02:32 10 DEFENDANT BEY: I just want to state one more thing.

11:02:35 11 With that bond, I would like -- everything is in my  
11:02:40 12 name. My name is what brought this case. And the case has  
11:02:43 13 been bonded in my name. And so I want them to -- I am the  
11:02:48 14 subrogee. And with me being the subrogee, I want to -- I want  
11:02:53 15 to -- I want a settlement of this claim and closure.

11:03:01 16 THE COURT: Thank you.

11:03:03 17 Now --

11:03:05 18 DEFENDANT BEY: Because it is in my name, and I am  
11:03:07 19 the name holder of Hakeem El Bey.

11:03:11 20 I would like to have this case settled with closure  
11:03:15 21 and I would like to order the Court for it to be released to  
11:03:19 22 me.

11:03:19 23 THE COURT: And you have made your record.

11:03:22 24 DEFENDANT BEY: Okay.

11:03:23 25 THE COURT: We will move on to another topic because

11:03:26 1 there was nothing additional or new in that statement.

11:03:28 2 DEFENDANT BEY: Okay.

11:03:29 3 THE COURT: So the next topic is I think setting the  
11:03:32 4 case for trial again. And also just to confirm, Mr. Bey, that  
11:03:41 5 Mr. Fuentes has, again, graciously and kindly agreed to be  
11:03:46 6 standby counsel, and so that happened between the last status  
11:03:51 7 hearing and today. And as we discussed at the last time, even  
11:03:55 8 though you think you might not need standby counsel, I do  
11:04:03 9 believe you ought to have the benefit of that, so that is why  
11:04:05 10 he is back in here.

11:04:06 11 All right?

11:04:07 12 DEFENDANT BEY: Yes, sir.

11:04:08 13 And I am glad to have him with me.

11:04:10 14 THE COURT: All right.

11:04:12 15 So I do believe the next step is to set a trial date.

11:04:17 16 Is that the government's position?

11:04:19 17 MS. MALIZIA: Yes, Your Honor.

11:04:20 18 THE COURT: And Mr. Fuentes, can you think of  
11:04:23 19 anything other than setting the trial date, and obviously  
11:04:26 20 setting a proposed pretrial order date and everything else?  
11:04:32 21 That is the next step in your view?

11:04:35 22 MR. FUENTES: Judge, no, I do not have anything in  
11:04:38 23 mind as standby counsel.

11:04:39 24 THE COURT: All right.

11:04:40 25 And Mr. Bey, other than what you had asserted

11:04:44 1 earlier, is a trial date the next step?

11:04:50 2 DEFENDANT BEY: I guess so, Judge.

11:04:51 3 I mean --

11:04:52 4 THE COURT: Okay.

11:04:54 5 DEFENDANT BEY: I mean if we --

11:04:57 6 You know, I am not consenting to proceeding, but if  
11:05:01 7 this is what we have to do, then we have to do it.

11:05:04 8 THE COURT: Okay.

11:05:05 9 DEFENDANT BEY: Yes.

11:05:06 10 THE COURT: And you are right, I am not asking you to  
11:05:10 11 consent to the trial in the sense of giving up your right to  
11:05:13 12 assert that you are not subject to one.

11:05:15 13 DEFENDANT BEY: Yes.

11:05:16 14 THE COURT: But since I have overridden that  
11:05:20 15 argument, that I believe is the next step.

11:05:26 16 So I will start with the government and then we can  
11:05:29 17 talk with Mr. Bey, Mr. Fuentes too, but what were you  
11:05:34 18 thinking?

11:05:34 19 MS. MALIZIA: Your Honor, we have a list of available  
11:05:36 20 dates that our witnesses are available. I have not had a  
11:05:39 21 chance to speak with Mr. Fuentes or Mr. Bey.

11:05:41 22 THE COURT: When does availability start?

11:05:44 23 MS. MALIZIA: As early as the week of March 5th, and  
11:05:46 24 then I have dates through September.

11:05:48 25 THE COURT: Okay. Wow, you're really prepared.



11:05:56 1 What do you think, Mr. Bey and Mr. Fuentes, about a  
11:06:02 2 trial date in -- what I am going to propose, it is a little  
11:06:17 3 bit further out than March, because I do have a mid March  
11:06:21 4 trial and then I will be out the last week of March. How  
11:06:25 5 about the week of April 16?

11:06:30 6 DEFENDANT BEY: Okay.

11:06:30 7 MS. MALIZIA: Your Honor, unfortunately one of our  
11:06:33 8 witnesses is out that week, but we could do the following  
11:06:37 9 week.

11:06:37 10 THE COURT: Let me see if that works.

11:06:41 11 MR. FUENTES: The 23rd?

11:06:44 12 THE COURT: The first trial, if I remember the  
11:06:47 13 transcript correctly, took all of two days, or two and a half  
11:06:51 14 days.

11:06:51 15 MS. MALIZIA: About that, Your Honor, yes.

11:06:53 16 THE COURT: So we will budget no more than a week, I  
11:06:57 17 think, and that is more than enough time.

11:07:00 18 April 23rd, what do you think?

11:07:05 19 DEFENDANT BEY: That is fine with me, Judge.

11:07:07 20 THE COURT: Mr. Fuentes, what does that look like?

11:07:10 21 MR. FUENTES: Looks pretty good, Judge. I have a  
11:07:12 22 commitment in San Antonio on Friday the 27th. It is a board I  
11:07:17 23 am on, I could tell them that I am still on trial if we run  
11:07:22 24 into the 27th, and I would be willing to do that.

11:07:24 25 THE COURT: I would appreciate it, because if we

11:07:27 1 float to the next week it will start interfering with my May  
11:07:31 2 trials.

11:07:32 3 MR. FUENTES: Then I think we could do it on the  
11:07:37 4 23rd. And I think it could be done in 2 or 3 days, but we  
11:07:40 5 will see.

11:07:40 6 THE COURT: Okay.

11:07:41 7 So April 23rd will be the trial date.

11:07:43 8 We will work backwards for a Pre-Trial Conference,  
11:07:46 9 which I know you went through, but I would like to do it  
11:07:49 10 again.

11:08:04 11 I will propose April 10th at 1:30?

11:08:09 12 MS. MALIZIA: Judge, I have a trial set through that  
11:08:12 13 week. I'm hoping it will plead. I could do it over the lunch  
11:08:14 14 hour potentially, but at this point I do have a trial set for  
11:08:19 15 that -- the whole week of April 9th.

11:08:19 16 THE COURT: When do you think you will know for sure?

11:08:21 17 MS. MALIZIA: I am hoping by the end of this week  
11:08:23 18 I'll know one way or the other.

11:08:23 19 THE COURT: Does it look good or not good?

11:08:25 20 MS. MALIZIA: Your Honor, I have said it looks good  
11:08:28 21 in the past, but -- it is a difficult defendant.

11:08:31 22 THE COURT: Let's see.

11:08:44 23 I just don't want to squeeze it too close and --

11:08:48 24 MR. HOTALING: And Judge, if she is on trial, I am  
11:08:50 25 available, and I am happy to.

11:08:54 1 THE COURT: Oh, yeah. I forgot about you.

11:08:54 2 MR. HOTALING: That is easy to happen. And it  
11:08:58 3 happens all the time, Judge.

11:09:00 4 THE COURT: I am sure Ms. Malizia will be brought up  
11:09:04 5 to speed.

11:09:05 6 So April 10th, does that work, Mr. Fuentes?

11:09:08 7 MR. FUENTES: I know there is a meeting in D.C. I  
11:09:13 8 usually attend.

11:09:14 9 THE COURT: Another board meeting?

11:09:17 10 MR. FUENTES: No, it is an important antitrust  
11:09:20 11 practice group meeting involving some international lawyers.

11:09:23 12 THE COURT: Okay.

11:09:24 13 Then how about April 12 at 1:00 p.m.?

11:09:28 14 MR. FUENTES: That is the U.S. lawyers antitrust  
11:09:30 15 meeting that follows the international meeting.

11:09:34 16 MR. HOTALING: How many meetings?

11:09:35 17 MR. FUENTES: That week is tough.

11:09:37 18 Does the following week work at all?

11:09:40 19 THE COURT: I just don't want to squeeze it too  
11:09:43 20 tight.

11:09:43 21 What I try to do at a Pre-Trial Conferences, in order  
11:09:49 22 to make the trial pretty smooth, we cover the waterfront of  
11:09:52 23 exhibits, for example, and if you have to adjust, either  
11:09:56 24 strategy or exhibits, then it helps to have a little bit extra  
11:09:59 25 time.

11:10:00 1 What --

11:10:01 2 Are you around April 9th or no?

11:10:06 3 MR. FUENTES: I was going to suggest the 9th or the

11:10:08 4 13th.

11:10:09 5 THE COURT: April 9th at 1:30.

11:10:12 6 MR. FUENTES: I could do that.

11:10:13 7 THE COURT: Mr. Bey?

11:10:14 8 DEFENDANT BEY: That is good.

11:10:15 9 THE COURT: So April 9th at 1:30.

11:10:18 10 Then we will work backwards from there for the

11:10:35 11 proposed pretrial order and motions in limine. Let's see.

11:10:39 12 So let's make that March 19. And then responses to

11:11:02 13 motions in limine on March 28, and replies on April 3rd.

11:11:22 14 And so on that note, Mr. Bey, I meant to print out,

11:11:26 15 and I forgot to do it, I'm sorry, but I have a standing order

11:11:30 16 governing proposed pretrial orders, it is actually a pre-trial

11:11:34 17 statement, as well as motions in limine, exhibit list, and so

11:11:41 18 on, on my web site.

11:11:44 19 Maybe if you wait after the hearing we can print that

11:11:46 20 out for you.

11:11:47 21 DEFENDANT BEY: Okay.

11:11:48 22 THE COURT: And I am sure that Mr. Fuentes will be

11:11:51 23 able to get it too. It takes a lot of work to put these

11:11:55 24 together.

11:11:56 25 You will see that you not only have to provide

11:12:00 1 motions in limine, meaning -- and you did this last time,  
11:12:03 2 actually, but motions in advance of trial, but also a witness  
11:12:06 3 list, with a very short description of what the witnesses are  
11:12:10 4 about, exhibit lists, and --

11:12:14 5 DEFENDANT BEY: Okay.

11:12:14 6 THE COURT: So it will take work before you even file  
11:12:18 7 it, and then you also need to be conferring with Mr. Fuentes,  
11:12:21 8 and actually it requires some discussion with the government,  
11:12:24 9 too, about any objections to exhibits and so on.

11:12:27 10 I know you all went through this the last time, but  
11:12:30 11 we are going to do it again, because now I am presiding over  
11:12:33 12 this case. And so, please, don't assume that any decisions  
11:12:40 13 that were made the first time around are going to apply again,  
11:12:44 14 because even though I will obviously give it some weight, it  
11:12:50 15 is important to -- so it is not completely a clean slate, but  
11:12:55 16 you ought to treat it as if whatever you want to do, you  
11:12:58 17 should ask for it again, okay, Mr. Bey?

11:13:01 18 DEFENDANT BEY: Okay.

11:13:02 19 THE COURT: And the government will do the same.

11:13:05 20 DEFENDANT BEY: Okay.

11:13:06 21 THE COURT: So please don't think of it as, oh, I can  
11:13:09 22 start the day before, because it's going to take work  
11:13:12 23 beforehand. All right?

11:13:12 24 DEFENDANT BEY: Okay.

11:13:20 25 THE COURT: I don't think I need another status

11:13:24 1 before the Pre-Trial Conference, but do you want to set a  
11:13:29 2 status date, Mr. Fuentes? Do you think that would make sense  
11:13:32 3 or no?

11:13:35 4 MR. FUENTES: Judge, honestly, as standby counsel I  
11:13:39 5 am not seeing it is necessary. But I would think that if  
11:13:42 6 Mr. El Bey, Mr. Bey, wants to raise anything, or have an  
11:13:46 7 opportunity to raise something, and periodically in the past  
11:13:50 8 he has filed things and raised questions, it might be helpful  
11:13:53 9 to the Court to just pick a date where he can come in and we  
11:13:57 10 can come in and discuss that, if need be, and maybe that will  
11:14:00 11 be after the briefing completes on the 3rd of April, but then  
11:14:05 12 we are here the following week.

11:14:07 13 THE COURT: Right, it would have to be some sort of  
11:14:10 14 mid March date for whatever reason.

11:14:12 15 Why don't we do this:

11:14:14 16 Are you working now?

11:14:15 17 DEFENDANT BEY: No, no.

11:14:16 18 THE COURT: All right.

11:14:17 19 So do you mind having another status in March?

11:14:21 20 DEFENDANT BEY: No, I don't.

11:14:23 21 THE COURT: I didn't know how hard it is for you to  
11:14:25 22 get down here.

11:14:26 23 So let's say the week of March --

11:14:29 24 When did I say is the joint pre-trial statement?

11:14:33 25 THE COURTROOM DEPUTY: Pretrial order is due on March

11:14:36 1 19th and the statement --

11:14:42 2 THE COURT: It is the same thing, it's the joint  
11:14:45 3 pre-trial statement actually. So let's set it for -- let's  
11:14:50 4 see.

11:14:50 5 So deeper in the week of March 19th.

11:14:55 6 THE COURTROOM DEPUTY: So we will see you back here  
11:15:12 7 on March 22nd at 10:45.

11:15:21 8 DEFENDANT BEY: Okay, okay.

11:15:23 9 THE COURT: Is there any objection, Mr. Bey, to  
11:15:26 10 excluding time under the Speedy Trial Act through the trial  
11:15:29 11 date?

11:15:30 12 DEFENDANT BEY: No, not really, no.

11:15:33 13 THE COURT: I mean, you -- I do think there is  
11:15:36 14 justification, because you are -- you are going to be filing  
11:15:39 15 motions again, right?

11:15:41 16 DEFENDANT BEY: Um, yeah.

11:15:43 17 THE COURT: Right.

11:15:45 18 I mean, if you wanted to make the argument that we  
11:15:48 19 should go to trial within 70 days, which actually we would  
11:15:59 20 almost be there anyway.

11:16:01 21 MR. HOTALING: (Nodding head.)

11:16:01 22 THE COURT: Do you have a problem with the trial  
11:16:02 23 date?

11:16:02 24 DEFENDANT BEY: Everything is fine, Judge.

11:16:04 25 THE COURT: Okay.

11:16:05 1 Let's exclude time through the trial date in order  
11:16:08 2 to allow the preparation of the motions in limine and other  
11:16:13 3 pre-trial filings, and for me to consider them, and for us  
11:16:16 4 to hold the Pre-Trial Conference, and then, as I said, for  
11:16:19 5 the parties to adjust their presentations for the trial  
11:16:22 6 itself.

11:16:23 7 Anything else, Mr. Bey?

11:16:24 8 DEFENDANT BEY: No.

11:16:24 9 THE COURT: Mr. Fuentes?

11:16:26 10 MR. FUENTES: I have a question, Judge.

11:16:28 11 THE COURT: Okay.

11:16:29 12 MR. FUENTES: I don't know that we would have an  
11:16:31 13 answer today, but it relates to the standby counsel duty.

11:16:34 14 THE COURT: Okay.

11:16:35 15 MR. FUENTES: Last time we were here, and I was here  
11:16:37 16 as standby counsel, Judge Posner frequently commented on how  
11:16:45 17 he might -- he might override Mr. Bey's Faretta rights and  
11:16:56 18 appoint me as trial counsel. And Judge Posner suggested that  
11:17:00 19 this could happen virtually at any time during the trial.

11:17:03 20 So as the Court could imagine, that left me in a  
11:17:07 21 position of preparing every examination, preparing to step in  
11:17:11 22 at a moment's notice, probably moving for a mistrial, Judge,  
11:17:14 23 based on the inability of counsel to step in like that. I  
11:17:18 24 think it raises an issue.

11:17:19 25 I also think that there probably will be a lot less



11:17:24 1 acrimony this time around than there was before, so the issue  
11:17:28 2 may never arise.

11:17:29 3 But my request for the Court to consider is, if the  
11:17:32 4 Court wishes me to step in at a moment's notice, or be  
11:17:37 5 prepared to do that, I would want to know that ahead of time,  
11:17:41 6 and that will affect how I prepare for the April 23rd trial.  
11:17:53 7 And I can't guarantee the Court that I wouldn't move for a  
11:17:55 8 mistrial were the Court to appoint me mid trial. I don't  
11:17:55 9 know.

11:17:59 10 But I just wanted to share that with the Court  
11:18:00 11 because it really did affect my level of effort and investment  
11:18:04 12 and preparedness, and so I wanted to share that with the  
11:18:09 13 Court.

11:18:09 14 THE COURT: Does the government have a position on  
11:18:11 15 that?

11:18:12 16 MS. MALIZIA: I don't think that we do, Your Honor.

11:18:14 17 THE COURT: And Mr. Bey, what Mr. Fuentes is trying  
11:18:17 18 to say in a nutshell, although you might grasp this, is that  
11:18:23 19 if any Judge, during the middle of a trial or at any time  
11:18:28 20 after allowing a defendant to represent himself decides that  
11:18:36 21 the Judge now has additional doubts as to whether the  
11:18:41 22 defendant is able to exercise that right, then the -- the  
11:18:46 23 Judge does have an ongoing duty to monitor the situation.

11:18:51 24 Nothing that has happened so far would lead me to  
11:18:55 25 think that the long question and answer that we went through

11:18:58 1 the last time around does not still apply, and will not  
11:19:02 2 continue to apply.

11:19:03 3 So although I will continue to monitor the situation,  
11:19:08 4 I don't actually expect to override Mr. Bey's right to  
11:19:15 5 represent himself.

11:19:16 6 If that were to happen, it is much more likely I  
11:19:19 7 would mistry the case than expect standby counsel to parachute  
11:19:28 8 in and do everything as if he were the counsel from the very  
11:19:31 9 beginning. So I don't expect that that would be a problem, if  
11:19:34 10 it comes to that.

11:19:37 11 I think it is unfair to standby counsel to require a  
11:19:41 12 level of preparation beyond what the -- what standby counsel  
11:19:49 13 truly means.

11:19:52 14 And so I don't expect that level of preparation.

11:19:55 15 MR. FUENTES: Thank you, Judge. That is very helpful  
11:19:57 16 for me to know. And I appreciate it.

11:20:00 17 THE COURT: Okay.

11:20:01 18 Anything else?

11:20:01 19 MS. MALIZIA: Your Honor, just for the record, the  
11:20:03 20 government did confer with Mr. Bey before the status this  
11:20:07 21 morning and he confirmed that he received the discovery and  
11:20:14 22 the trial exhibits that you ordered us to produce.

11:20:17 23 DEFENDANT BEY: Yes, I did receive it, Judge.

11:20:19 24 THE COURT: Okay.

11:20:20 25 Very good.

11:21:42 1 MS. MALIZIA: Thank you, Your Honor.

11:21:42 2 MR. FUENTES: Thanks.

11:21:42 3  
4 (Proceedings concluded.)

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8 C E R T I F I C A T E

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11 I certify that the foregoing is a correct transcript  
12 from the record of proceedings in the above-entitled matter.

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14 /s/Krista Burgeson, CSR, RMR, CRR January 21, 2019  
15 Federal Official Court Reporter Date

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